

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

813P0151

HOUSE BILL NO. 1272

Introduced by: Representatives Feinstein, Ahlers, Burg, Dennert, Elliott, Engels, Gassman, Lucas, Miles, Moore, Nygaard, Sigdestad, Thompson, and Van Norman and Senators Hanson (Gary), Bartling, Heidepriem, Hoerth, Jerstad, Katus, Kloucek, Koetzle, Maher, Nesselhuf, and Two Bulls

- 1 FOR AN ACT ENTITLED, An Act to establish a state renewable energy standard.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. That § 49-34A-94 be amended to read as follows:
- 4 49-34A-94. For the purposes of §§ 49-34A-94 to 49-34A-96, inclusive, and sections 2 to 15,
- 5 inclusive, of this Act, the terms, renewable electricity~~and,~~ recycled energy, and, eligible
- 6 renewable energy resource, include electricity generated from facilities using one or more of the
- 7 following sources:
- 8 (1) Wind that uses wind as the source of energy to produce electricity;
- 9 (2) Solar that uses the sun as the source of energy to produce electricity;
- 10 (3) Hydroelectric that uses water as the source of energy to produce electricity;
- 11 (4) Hydrogen that is generated from one of the sources listed in this section;
- 12 (5) Biomass that uses agricultural crops and agricultural wastes and residues, wood and
- 13 wood wastes and residues, animal and other degradable organic wastes, or landfill
- 14 gas as the fuel to produce electricity;



- 1 (6) Geothermal that uses energy contained in heat that continuously flows outward from
2 the earth as the source of energy to produce electricity; and
- 3 (7) Recycled energy systems that produce electricity from currently unused waste heat
4 resulting from combustion or other processes and which do not use an additional
5 combustion process. The term does not include any system whose primary purpose
6 is the generation of electricity.

7 Section 2. Terms used in this Act mean:

- 8 (1) "Alternative compliance payment," a payment to the state treasury of fifty dollars per
9 megawatt-hour of renewable energy obligation, in 2008 dollars, adjusted up or down
10 by the consumer price index in each applicable year, which may be made in lieu of
11 standard means of compliance with this Act;
- 12 (2) "Commission," the Public Utilities Commission;
- 13 (3) "Compliance year," a calendar year beginning January first and ending December
14 thirty-first, for which an obligated entity shall demonstrate that it has met the
15 requirements of this Act;
- 16 (4) "Electrical energy product," an electrical energy offering that can be distinguished by
17 its generation attributes or other characteristics, and that is offered for sale by an
18 obligated entity to end-use customers;
- 19 (5) "Eligible biomass fuel," fuel sources including brush, stumps, lumber ends and
20 trimmings, wood pallets, bark, wood chips, shavings, slash and other clean wood that
21 is not mixed with other solid wastes; agricultural waste and residues; food and
22 vegetative material; energy crops; landfill methane; biogas; or biodiesel and other
23 liquid fuels that are derived from such fuel sources;
- 24 (6) "Eligible renewable energy resource," resources as defined in § 49-34A-94, except

1 in the case of certain hydroelectric facilities and certain waste-to-energy facilities as
2 provided in section 5 of this Act;

3 (7) "End-use customer," a person or entity in South Dakota that purchases electrical
4 energy at retail from an obligated entity;

5 (8) "Existing renewable energy resources," means generation units using eligible
6 renewable energy resources and first going into commercial operation before
7 January 1, 2008;

8 (9) "Generation attributes," the nonprice characteristics of the electrical energy output
9 of a generation unit including the unit's fuel type, emissions, vintage, and policy
10 eligibility;

11 (10) "Generation unit," a facility that converts a fuel or an energy resource into electrical
12 energy;

13 (11) "New renewable energy resources," generation units using eligible renewable energy
14 resources and first going into commercial operation after December 31, 2007; or the
15 incremental output of generation units using eligible renewable energy resources that
16 have demonstrably increased generation in excess of ten percent through capital
17 investments made after December 31, 2007; but in no case involved any new
18 impoundment or diversion of water;

19 (12) "Obligated entity," a person or entity that sells electrical energy to end-use customers
20 in South Dakota, including nonregulated power producers and electric utility
21 distribution companies supplying standard offer service, last resort service, or any
22 successor service to end-use customers;

23 (13) "Off-grid generation facility," a generation unit that is not connected to a utility
24 transmission or distribution system;

1 (14) "Small hydro facility," a facility employing one or more hydroelectric turbine
2 generators and with an aggregate capacity not exceeding thirty megawatts. For
3 purposes of this definition, the term, facility, is defined in a manner consistent with
4 Title 18 of the Code of Federal Regulations, section 292.201 et seq., as amended to
5 January 1, 2008, except that the size of the facility is limited to thirty megawatts,
6 rather than eighty megawatts.

7 Section 3. The commission shall promulgate rules pursuant to chapter 1-26 establishing a
8 renewable energy standard by no later than December 31, 2009. Starting in calendar year 2012,
9 all obligated entities shall derive at least three percent of the electricity they sell at retail to
10 South Dakota end-use customers, adjusted for electric line losses, from eligible renewable
11 energy resources, escalating annually, according to the following schedule:

- 12 (1) At least three percent of retail electricity sales by December 31, 2012;
- 13 (2) An additional one percent of retail electricity sales in each year thereafter through
14 2019; and
- 15 (3) After 2019, these minimum renewable energy percentages shall increase by one
16 percent of retail sales per year until 2029, unless the commission revises the schedule
17 of annual increases. The commission may make such revisions only after hearings
18 and review of the conditions in the wholesale electricity market, the adequacy of
19 renewable energy supplies to meet requirement imposed by this section, efforts by
20 obligated entities to meet the minimum percentage requirements, and other factors
21 that affect the rates to residential customers, and thereby determines that compliance
22 costs exceed five percent of the bill of a typical residential customer using five
23 hundred kilowatt-hours per month despite good faith efforts by the obligated entity
24 to comply with the annual percentage schedule. At no time may the minimum

renewable energy percentage decrease below the percentage in effect at the time revision to the schedule is implemented. Any revisions to the schedule of annual increases shall be announced at least two years before the first year of the revised schedule of annual increases.

For each obligated entity, no more than two percent of retail electricity sales out of each year's total renewable energy standard obligation may be derived from existing renewable energy resources. All remaining obligations shall be met with new renewable energy resources. All renewable generation shall take into consideration both economic feasibility and environmental concerns.

Section 4. In 2029 the minimum renewable energy standard shall be maintained at that level achieved indefinitely, unless the commission proposes to eliminate the standard, and if so, only after sufficient time has passed to allow amortization of generation investments, a minimum of ten years, and the commission has found that the market for renewable energy has been transformed to a point that makes continued enforcement of the renewable energy standard unnecessary to maintain its targets and objectives.

Section 5. Eligible renewable energy resources shall be certified as such by the commission. Waste-to-energy combustion of any sort or manner may in no instance be considered eligible except for fuels as identified in § 49-34A-94. Electricity produced from hydroelectric facilities is only eligible if the electricity is produced by small hydro facilities. Eligible biomass fuels may be co-fired with fossil fuels, except that only the renewable energy fraction of production from multi-fuel facilities may be considered eligible. Energy production from off-grid generation and customer sited generation facilities certified by the commission as eligible renewable energy resources may also be used to demonstrate compliance if the facilities are physically located in South Dakota.

1 Section 6. A generation unit located outside the state of South Dakota may qualify as an
2 eligible renewable energy resource, but the associated generation attributes shall be applied to
3 the renewable energy standard only to the extent that the energy produced by the generation unit
4 is actually delivered into South Dakota for consumption by South Dakota customers. The actual
5 delivery of such energy from the generation unit into South Dakota shall be demonstrated by
6 methods specified by the commission in rules promulgated pursuant to chapter 1-26.

7 Section 7. The commission shall determine, verify, and ensure compliance with this Act. If
8 the commission finds that an obligated entity has not met the renewable energy standard in
9 violation of the requirements of this Act, the commission may impose a financial penalty on the
10 obligated entity in an amount not to exceed the estimated cost to the obligated entity to achieve
11 compliance. The commission shall promulgate rules required under this Act no later than
12 December 31, 2009.

13 Section 8. An obligated entity may discharge all or any portion of its compliance obligations
14 by making an alternative compliance payment to the state treasury. The commission shall
15 promulgate rules pursuant to chapter 1-26 to establish procedures governing alternative
16 compliance payments.

17 Section 9. Beginning on November 1, 2008, each retail provider shall annually report to the
18 Public Utilities Commission on the provider's energy sales during the twelve month period
19 ending on the preceding July thirty-first. This report shall include information regarding
20 qualifying electricity delivered and renewable energy purchased as a percentage of annual retail
21 sales and a narrative report that describes steps taken to meet the state renewable energy
22 standard and identifies any challenges or barriers encountered in meeting the standard. The
23 commission shall make the data and narrative reports open, available, and accessible to the
24 public through the commission office and on the commission's internet site. The commission

1 shall compile the data obtained from the reports and submit the data to the Legislature by the
2 following January first. A distribution cooperative may aggregate its reporting through
3 generation and transmission cooperatives and a municipal utility may aggregate its reporting
4 through a municipal power agency.

5 Section 10. The commission shall require annual compliance filings to be made by all
6 obligated entities. All electric utilities shall cooperate with the commission in providing data
7 necessary to assess the magnitude of obligation and verify the compliance of all obligated
8 entities.

9 Section 11. The commission shall promulgate rules pursuant to chapter 1-26 to develop
10 renewable energy contracting standards for obligated entities. Such contracting standards shall
11 balance the objectives of:

- 12 (1) Ensuring that new renewable generation can receive financing at commercial rates;
- 13 (2) Ensuring that ratepayers bear a minimum cost of compliance; and
- 14 (3) Minimizing interference with emerging competitive electric market opportunities in
15 the state.

16 The standards shall address minimum contract duration and quantities associated with
17 renewable energy standard compliance for standard offer service, last resort service, or any
18 successor service to end-use customers, independently and in aggregate, appropriate in the
19 prevailing marketing conditions. The standards may only be maintained until the commission
20 finds that they are no longer necessary to support the objectives of this Act.

21 Section 12. The commission shall, by June 30, 2009, promulgate rules pursuant to chapter
22 1-26 to establish right-to-know regulations requiring any obligated entity to distribute energy
23 source disclosures to all customers of each electrical energy product offered. The energy source
24 disclosure shall indicate what sources of energy were used to generate electricity for each

1 electrical energy product, expressed as a percentage of the total amount of energy used towards
2 each electrical energy product. The energy source disclosure shall show the percentages of
3 energy obtained from each of the eligible renewable energy resources, as well as the percentage
4 energy obtained from nuclear plants, natural gas, oil (which may include any fossil oil),
5 hydroelectric plants that are not an eligible renewable energy resource, coal, and any other
6 sources that the commission may require to be included. The energy source disclosure shall also
7 indicate the emission created as a result of generating said electricity.

8 Section 13. Energy source disclosures shall be distributed to consumers on a quarterly basis.
9 The obligated entities shall be allowed to recover in rates all incremental costs associated with
10 preparation and distribution of the disclosure label.